

WALL STREET JOURNAL
13 November 1986ARTICLE APPEARED
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Reagan Approval Of Arms for Iran Stirs Legal Debate

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Step Seems to Break Embargo Enacted in 1979; Spirit, Letter of Law at Issue

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WASHINGTON — President Reagan's approval of arms shipments to Iran raises a host of troubling and complicated legal questions, some of them still unanswered by the White House.

The administration argues that the president's approval of arms transfers by Israel to Iran didn't violate any U.S. law, even though the policy appears to contradict the U.S. arms embargo against Iran. The embargo has been in effect since 1979.

The administration also contends that the White House had no legal obligation to inform Congress of its back-channel policy. It supports this view by citing executive privilege and national security concerns.

Experts familiar with the laws that might apply to this unusual situation say that even if the White House didn't obey the spirit of the law, it may have followed the letter of the law sufficiently to stay out of legal trouble. They note, however, that some crucial facts that still aren't known about the arms arrangement could alter that assessment.

Loopholes and Caveats

In any event, the question of the legality of the arms shipments is sure to become the focus of a heated congressional debate that will turn on a number of arcane loopholes and caveats, some of which appear to grant the president extraordinary powers in cases involving national security.

"These loopholes have been staring people in the face, but no one was interested until now," says Jay Peterzell, an attorney with the Washington-based Center for National Security Studies.

The main laws that could affect the arms shipments are the 1976 Arms Export Control Act, the 1979 Export Administration Act, and the 1986 Omnibus Diplomatic Security and Anti-Terrorism Act. All in different degrees prohibit the sale of arms to state sponsors of terrorism. President Reagan formally declared in March 1984 that Iran was such a state.

But the 1976 law allows the president to waive the ban on arms shipments to states supporting terrorism when "national security dictates"—providing that he notifies the Speaker of the House of Representatives and the Senate Foreign Relations Committee.

The 1976 law is unclear about when this notification must take place, however. And it waives the notification requirements on shipments of "defense articles . . . training and services" valued at less than \$50 million.

Meanwhile, New York University law professor Andreas Lowenfeld suggests that

the terms of the U.S. arms embargo against Iran, which was imposed under the International Emergency Powers Act, could exempt the president from the general ban on arms shipments to Tehran.

Direct and Indirect Sales

This year's omnibus anti-terrorism act also has complicated caveats. It was designed to cut off arms sales to terrorist states, but a State Department official says it includes an exemption for the president in cases of national security.

And even in more ordinary cases, administration officials contend, the 1986 law only specifically prohibits direct arms shipments from the U.S.—not such third-party shipments or resales of American military equipment as apparently were involved in the Iranian situation.

The White House's actions also raise questions involving the 1980 Intelligence Oversight Act, which essentially requires the administration to give the congressional intelligence committees advance notice of any "anticipated" intelligence activities that might have a "significant" impact on foreign policy.

Covert 'Diplomacy'

Here too there are caveats. When writing the law, Congress and the executive branch couldn't agree on how broad the president's constitutional powers as commander-in-chief were. So, although the law appears to require the president to give Congress prior notification of covert intelligence operations, the White House succeeded in inserting a clause allowing the president to notify Congress "in a timely fashion" in extraordinary circumstances. In such cases, the law requires the president to explain why he couldn't give prior notice.

The 1980 law also has a clause suggesting that covert "diplomacy" is separate from covert intelligence activity and is privileged under the act. That provision conceivably could apply in the Iran case—there have been suggestions that secret U.S. arms shipments to Iran were part of a diplomatic attempt to improve relations

with some factions in that country's government.

The 1980 law does require that before the Central Intelligence Agency spends money abroad, the administration must give written certification explaining why the operation is important. Ordinarily, this written directive is supposed to be shared with the congressional intelligence committees. Experts believe prior notification generally has been provided, but they're divided on whether it is absolutely required in all cases.

It isn't known whether CIA money was involved in the Iranian arms shipments.